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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 880

ALHAMBRA GOLD MINE CORPORATION,
a corporation,
Appellant,

vs.

THE ALHAMBRA-SHUMWAY MINES, INC.,
a corporation,
Appellee.

MOTION OF APPELLEE TO DISMISS OR AFFIRM.

MILO E. ROWELL,
RICHARD Z. LAMBERSON,
ROWELL, LAMBERSON & THOMAS,
619 Rowell Building, Fresno 21, California,
Attorneys for Appellee.

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MOTION OF APPELLEE TO DISMISS OR AFFIRM.

I.

MOTION TO DISMISS OR AFFIRM.

Pursuant to the provisions of Rule 16 of the Supreme Court of the United States, the Alhambra-Shumway Mines, Inc., a corporation, Appellee, moves to dismiss the appeal of Appellant, Alhambra Gold Mine Corporation, a corporation, or in the alternative to affirm the judgment of the District Court of Ap-

peal of the State of California, Third Appellate District.

II.

GROUNDS FOR MOTION TO DISMISS.

Said motion to dismiss the appeal of Appellant, Alhambra Gold Mine Corporation, is made upon the ground that such appeal is not within the jurisdiction of the Supreme Court in that a final judgment has not been entered in said action within the meaning of Judicial Code, Section 1237.

III.

AUTHORITY IN SUPPORT OF MOTION TO DISMISS.

The reversal of a judgment of a trial court in California without direction has the effect of remanding the cause for a new trial and places the parties in the same position as if the case had never been tried. There is, therefore, no final judgment within the meaning of Judicial Code, Section 1237 and the Supreme Court of the United States has no jurisdiction over an appeal from such decision. *Gospel Army v. Los Angeles*, 331 U.S. 543, 67 Supreme Court 1428.

IV.

Said motion to affirm is made upon the ground that it is manifest that the questions upon which the de-

cision of this cause depends are so unsubstantial as not to need further argument.

V.

AUTHORITIES IN SUPPORT OF MOTION TO AFFIRM.

A. It is well established that a state has power to forfeit the charter of a domestic or foreign corporation for nonpayment of franchise tax, and such a regulation violates no constitutional prohibition. *St. Louis Southwestern Railway Co. v. State of Arkansas,* 235 U.S. 350, 35 Supreme Court 366; *Pullman Company v. Richardson,* 43 Supreme Court 366, 261 U.S. 330.

This is more particularly true where a corporation in order to avoid such forfeiture has the full right to make payment of taxes assessed and to file suit for refund. *Helms Bakeries v. State Board of Equalization,* 53 Cal. App. 2d 417.

B. Whether or not performance of a mining lease constitutes the transaction of intra-state business is primarily a question of fact subject to the control of the decisions of the courts of the State of California and presents no Federal question in the absence of an abuse of discretion. Gold mining in California has been held to constitute engaging in intra-state business. *O'Connell Gold Mines, Ltd. v. Baker,* 63 Cal. App. 2d 384.

Appellant, a foreign corporation, having chosen to enter into the State of California and qualify as a

foreign corporation transacting business, was bound by the rules and regulations of the state relative thereto.

Dated, Fresno, California,
April 15, 1958.

Respectfully submitted,
MILO E. ROWELL,
RICHARD Z. LAMBERSON,
ROWELL, LAMBERSON & THOMAS,
Attorneys for Appellee.